

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY HEALTH
AND SECURITY FUND; LOCALS 302
AND 612 OF THE INTERNATIONAL
UNION OF OPERATING ENGINEERS-
EMPLOYERS CONSTRUCTION
INDUSTRY RETIREMENT FUND;
WESTERN WASHINGTON OPERATING
ENGINEERS-EMPLOYERS TRAINING
TRUST FUND,

Plaintiffs,

v.

ROADWAY CONSTRUCTION, INC., a
Washington corporation,

Defendant.

NO.

COMPLAINT TO COMPEL AUDIT

Plaintiffs Locals 302 and 612 of the International Union of Operating
Engineers Construction Industry Health and Security Fund, Locals 302 and 612 of
the International Union of Operating Engineers-Employers Construction Industry
Retirement Fund, and Western Washington Operating Engineers-Employers Training
Trust Fund and allege:

COMPLAINT TO COMPEL AUDIT

Page 1 of 6

G:\01-01999\541\Roadway Construction 73253-73254 COMPEL 7.17-12.17\Complaint.doc

Reid, McCarthy, Ballew & Leahy, L.L.P.
ATTORNEYS AT LAW

100 WEST HARRISON STREET • NORTH TOWER, SUITE 300
SEATTLE, WASHINGTON 98119
TELEPHONE: (206) 285-0464 • FAX: (206) 285-8925

I.

They are unincorporated associations operating as trust funds pursuant to Section 302 of the Labor Management Relations Act of 1947, as amended, to provide medical, retirement, and training benefits for eligible participants. Plaintiffs' offices are located in King County, Washington.

II.

The Court has jurisdiction over the subject matter of this action under Section 502 (e)(1) and (f) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132 (e)(1) and (f) and under Section 301 (a) of the Taft-Hartley Act, 29 U.S.C. §185 (a).

III.

Venue is proper in this district under Section 502 (e)(2) of ERISA, 29 U.S.C. §1132 (e)(2), because plaintiff Trusts are administered in this district.

IV.

Defendant is a Washington corporation.

V.

Defendant is bound to a collective bargaining agreement with Local 612 of the International Union of Operating Engineers (hereinafter "Local"), under which Defendant is required to promptly and fully report for and pay monthly contributions to the Plaintiff Trusts at varying, specified rates for each hour of compensation Defendant pays to its employees who are members of the bargaining unit

1 represented by the Local (such bargaining unit members are any of Defendant's part
2 time or full time employees who perform any work task covered by the Defendant's
3 labor contract with the Local, whether or not those employees actually join the Local).

4 VI.

5 Defendant accepted the Plaintiffs' respective Trust Agreements and thereby
6 agreed to audits by the Plaintiff Trusts of its records as follows, in part:
7

8 The Board may require the Employers, any Signatory Association, any
9 Individual Employer, the Union, any Employee or other beneficiary to promptly
10 furnish to the Trustees, on demand, such payroll records, information, data,
11 reports, or documents reasonably required for the purposes of administration
12 of the Fund. The parties agree that they will use their best efforts to secure
13 compliance with any reasonable request of the Board for any such information,
14 data, reports or documents. The Trustees, or their authorized representatives,
15 may examine the pertinent payroll records of each Individual Employer with
16 respect to the Employees benefiting from this Agreement whenever the
17 Trustees in connection with the proper administration of the Fund deem such
18 examination necessary or advisable.

19 In the event that any such audit shall determine that the Individual Employer is
20 delinquent in the payment of contributions due the Fund, the Individual
21 Employer shall be obligated for the cost of such audit; provided, however, that
22 the Board of Trustees may waive the imposition of such costs upon good
23 cause shown.

24 VII.

25 The Trustees of Plaintiff Trusts deem it both necessary and advisable to the
26 proper administration of the Trusts that their authorized representatives examine the
27 Defendant's books and records for the inclusive period of July 1, 2017 through
28 December 31, 2017 to determine if the Defendant previously reported for and paid to
29 the Trusts all of the amounts due them for the inclusive employment of members of
30 the bargaining unit represented by the Local for said period.

VIII.

On September 14, 2018, the auditors initially called Defendant (Chris Schober, owner) and left a voicemail requesting a return call. Two further attempts to contact the Defendant were made on September 17, 2018 and on October 29, 2018. On November 30, 2018, Defendant, agreed to send records electronically and provided the auditors with his email address. The auditors sent Defendant emails on November 30, 2018 and on December 17, 2018. No response was received. On December 21, 2018, the auditors called Defendant and left another voicemail. On December 28, 2018, the auditors called and spoke with Defendant. At that time Defendant confirmed that he had received their email and assured the auditors that he would send the requested records the following Monday. No records were received. The auditors left Defendant a voicemail on January 7, 2019 and sent an email on January 21, 2019. They made a final request on February 8, 2019 to respond to them by February 15, 2019. No response was received. To date Defendant has failed to make all of the requested records available for the thorough examination the Trustees deem necessary and advisable to the proper administration of the Trusts.

WHEREFORE, Plaintiffs pray the court as follows:

1. That the Court enter an Order Compelling Audit under which the Defendant shall be directed by the Court, within a specified time to make available to the authorized representatives of the Trustees of the Trusts the following documents:

- a. Payroll check registers showing hours and wages for all employees;
- b. State Unemployment Insurance Quarterly Reports (3rd Qtr 2017 & 4th Qtr 2017);
- c. Employee list showing names and title/occupation of everyone who appears in the above documents;
- d. Job list showing the job names and locations where work was performed; and
- e. Other craft trade remittance reports (Laborers union, etc.) if any worked during the timeframe July 2017 through December 2017.

2. Afford to the authorized representatives of the Trustees of the Trusts both ample time and opportunity to examine all such materials of Defendant at such time and at such place as shall be convenient to the Trustees' authorized representatives.

3. For judgment against the Defendant for:

- A. All of the Plaintiffs' attorney's fees incurred in gaining auditor access to Defendant's records;
- B. All auditing expenses incurred by the Trusts in conducting the audit;
- C. All of the Plaintiffs' costs incurred in gaining auditor access to defendant's records; and
- D. For such other and further relief as the Court may deem just and equitable.

//
//
//

1 DATED this 28th day of March, 2019.

2 REID, McCARTHY, BALLEW & LEAHY,
3 L.L.P.

4 
5 _____
6 Russell J. Reid, WSBA #2560
7 Attorney for Plaintiffs
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26